

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND) MDL NO. 13-02419-FDS
COMPOUNDING)
PHARMACY CASES LITIGATION)

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

STATUS CONFERENCE/MOTION HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 2
One Courthouse Way
Boston, MA 02210

May 14, 2013
2:00 p.m.

Valerie A. O'Hara, FCRR, RPR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3204
Boston, MA 02210
E-mail: vaohara@gmail.com

1 Now, so there's discovery. I mean, in
2 reality, the discovery of whom, the New England
3 executives, the New England people who are on the hook.
4 As we pointed out in our filings, those will be the
5 shortest depositions. They should last about as long as
6 the congressional hearings did, which is long enough for
7 the plaintiff to say are you really going to plead the
8 Fifth to every substantive question, and so I won't be
9 coming up here to take depositions of the New England
10 executives, but certainly somebody might, and I'm sure
11 they'll tell us what they say when they do that, and if
12 the defendant in our cases wants to take their
13 deposition, they will have to go through you.

03:04PM

14 You raised a practical question. I think
15 there was some reference to the fact that just the gates
16 would open and people would be barreling up here to get
17 New England's documents. I'm a little confused by that
18 myself because I saw on the TV that the Federal
19 Government was taking out all those documents at some
20 point, but I assume New England still has some documents
21 that may be relevant and some other evidence that may be
22 relevant.

03:05PM

23 THE COURT: Well, you know, I haven't yet
24 been called upon to address the issue of how, you know,
25 criminal investigations is going to interact with civil

1 employees but not principals at NECC? Where are they
2 going to go? Do they have contribution indemnification
3 claims? Don't they have to be released as a part of a
4 global settlement? I'm not really addressing that here
5 today, but you're right to identify that that's out
6 there.

7 Now, with respect to the NECC and the
8 NECC-affiliated entities and persons, there has become
9 an understanding, which is that the trustee is in the
04:13PM 10 process of trying to undertake what would be a
11 resolution with all of those persons and entities to
12 create a pot, which pot eventually would become subject
13 to a bankruptcy plan and an allocation and a release.

14 Because I've come to an understanding with
15 Mr. Moore that your negotiation right now is your
16 negotiation, and when as, and, if appropriate, other
17 people be brought in, including myself, to make sure
18 that the settlement is satisfactory or not, that's fine.

19 Obviously in the context of a plan as well,
04:14PM 20 the creditors' committee would want to know what the
21 proposed resolution is, the amounts, the basis for it
22 and sign off on it as well.

23 For the time being, we are hands off. There
24 are some issues though that are back and forth on that.
25 So, we've said, we, the PSC has said then we won't take

1 clinics and from the national defendants, whether they
2 are defendants here or whether they are nonparties that
3 have information that relate to this issue because a
4 part of what the PSC plans to do is to find out the
5 truth about what it is that happened here, find out what
6 products were distributed from NECC, when, to whom, what
7 they did with them and who they distributed them to,
8 some basic facts about what's out there.

9 During that process, if any of those
04:16PM 10 national or state-based defendants want to join a
11 discussion that's happening with the trustee or the PSC
12 or the creditors' committee with the PSC, then that's
13 what they'll do, and we'll stand down, but we're going
14 to go forward with discovery with respect to that.

15 Now, the intention of the PSC is to
16 undertake this discovery in a judicious manner, meaning
17 we are not trying to just undertake discovery for
18 discovery sake. One thing we're trying to be mindful,
19 for instance, is whether or not any of these defendants
04:16PM 20 or potential defendants have wasting policies, that we
21 don't end up wasting the policy or that you know about
22 it, just like you would in any other tort case, you'd
23 sort of have to balance what information you have versus
24 the defense costs that you've racked up, so that will be
25 a part of what it is that we address as well.

1 that really stands in the pecking order.

2 Under 1334 and Section 157, we are confident
3 that the array of defendants in the New Jersey cases
4 give you "related to" jurisdiction.

5 NECC is in a number of those cases, if not
6 all of them. Ameridose is in all of them. Alaunus is
7 in all or most of them, clearly "related to"
8 jurisdiction, and under the New Jersey Product Liability
9 Act, those state court defendants are clearly by
04:39PM 10 definition not manufacturers or sellers. That's why we
11 argued fraudulent joinder pretty vigorously at every
12 level.

13 And, quite frankly, our argument on 157 in
14 the New Jersey cases is very consistent with the
15 trustees' motion and even the view taken by the PSC on
16 these matters because the carve-out that they're urging
17 only pertain to cases like the Virginia cases, the
18 Tennessee cases where there are no Tier I, if you will,
19 defendants, so when we put in there that severance was
04:40PM 20 an option, it was clearly argued last and meant to be an
21 option of last resort.

22 Now, that segues into my second point. We
23 believe pretty strongly in the Section 157 argument for
24 many reasons and in many levels in what you've heard
25 today. There is certainly the possibility that you will